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HUMAN RIGHTS COMMITTEE

Forty-second session

SUMMARY RECORD OF THE 1065th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 8 July 1991, at 3 p.m.

Chairman: Mr. POCAR

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Consideration of reports submitted by States parties under article 40 of the Covenant

Initial report of the Sudan

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GE.91-16575/3347B

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial report of the Sudan (CCPR/C/45/Add.3)

1. At the invitation of the Chairman, Mr. Abdel Samie Omer (Sudan) took a place at the Committee table.

2. The CHAIRMAN invited the representative of the Sudan, Minister and Political Adviser to the Revolutionary Command Council, to introduce his country's initial report (CCPR/C/45/Add.3).

3. Mr. ABDEL SAMIE OMER (Sudan) said that four highly significant developments had occurred since the submission of the initial report on 3 January 1991: the promulgation of a fourth constitutional decree on 4 February; the organization, from 10 to 18 March, of a major Conference on Justice and Legal Reform; the release of political detainees on 29 April; and the first steps towards a political system of participatory democracy.

4. The essential purpose of Constitutional Decree No. 4 was to lay the legal foundations of a federal system in the Sudan. Its provisions repealed all earlier regional government legislation. It established the number of states and their capitals and boundaries and made each state a corporate entity. It also dealt with federal and state jurisdiction and powers, federal immunities, federal and state organs of government and state responsibilities, and catered for legislation during the transitional period. Lastly, it established specific rules concerning the vital issues of the state budgets and revenues.

5. In conformity with its practice of seeking consultation and advice on serious national issues, the Government of the Revolution for National Salvation had convened a large-scale Conference on Justice and Legal Reform, which had been attended by more than 1,000 professionals and experts concerned with law and the administration of justice, as well as observers from other countries. Thorough and intensive discussions had resulted in the formulation of almost 100 important recommendations, some of which were of a general nature while others related specifically to the judiciary, the Ministry of Justice and the Attorney-General's Office; the police; prisons; military justice; legal reform; and legal education, training and qualifications. The recommendations, which were far more than the expression of pious hopes, having been drafted by those who were determined to seek their speedy implementation, were unique in the Sudan's history, and leaned strongly towards the promotion and protection of fundamental human rights. Full details would be forwarded to the Committee, but in the meantime he would highlight some of the most significant of the recommendations.

6. Reiterating that the principal objective was the establishment of a federal system on appropriate and - most importantly in view of all the instability of recent years - permanent legal and constitutional foundations, once the peaceful settlement of the conflict and civil war had been consolidated, he said that the right to litigate would be guaranteed as a natural right; recourse to the customary agaweed mechanism for mediation and

the settlement of disputes out of court would be encouraged; and there would be control over the granting of immunities so that equality before the law might reign supreme. The recommendation that all arrest and detention procedures should be subjected to judicial control and review marked a radical reform that would be implemented very shortly. Several recommendations concerned the protection of the independence of the judiciary; the protection of judicial work from interference; the responsibilities and security of tenure of judges; legal ethics and the conduct of advocates; the acceleration of procedures; the simplification of processes of litigation; the limitation of the jurisdiction of Courts of Public Order; and the virtual elimination of exceptional or special courts.

7. While the establishment of a system of mazalim, or ombudsman, was the subject of another recommendation, together with the expansion of legal aid services, the role and functions of the Attorney-General's Office were also addressed in some detail. Pointing out that the separation of the posts of Attorney-General and Minister of Justice, which had become intertwined through a merging of Anglo-Saxon and Arab traditions, was among the measures envisaged, as was the extension of Attorney-General's offices to all states of the Federation as a means of facilitating the settlement of disputes between citizens and the authorities, he explained that those were just a few examples of the attempts being made to unravel and simplify the complexities of a legal system whose traditional roots were to be found in customary law, the Islamic Shariah, and Anglo-Saxon positive law alike.

8. Another series of recommendations dealt with custody, detention and penal reform, although as far as the latter question was concerned, the Sudan had already made considerable progress. It was also recommended that the jurisdiction of the military courts should be restricted to issues affecting military personnel. Finally, a series of recommendations covered the technical revision of laws on the one hand and the more abstract business of law reform on the other, as well as measures to extend and strengthen the legal profession and, more especially, to ensure that graduates taking up practice in the Sudan after studying abroad would be able to cope with all the ramifications inherited from the past.

9. With regard to the third major recent development - the release of virtually all political detainees, numbering some 300 - only a few such individuals remained in prison, facing specific charges. In addition, the Government had put forward amendments to all security legislation and they were expected to be approved in the near future.

10. Lastly, because of the perceived unworkability of multi-party democracy or the single-party model in the Sudan, given the country's enormous linguistic, ethnic and cultural mix and the negative and bitter experiences of the past, steps were being taken to introduce a system of participatory democracy without political parties, with the aim of securing popular and truly democratic participation in the decision-making process. Not only was that system expected to ensure full representation from the grass roots upwards; there were special hopes that it would enable the voices of the enlightened, better-educated citizens of the country - the so-called "modern forces", who were at ease neither in the traditional family-based parties nor in alien sectarian or religious parties whose ideas were imported from abroad - to be heard in the national debate.

11. Mr. EL SHAFEI remarked that, although the fact that four of the States party reports to be considered at the current session were from Arab countries was no more than a coincidence, it perhaps constituted a good omen for the achievement of widespread observance in the Arab world of the rights enshrined in the Covenant.

12. By formalizing contact with States parties, the Committee's consideration of initial reports was usually among the most interesting of its exercises and one which formed the basis for the study of subsequent reports. Summing up what the members of the Committee expected from such reports, and outlining the structure of the dialogue that was expected to ensue, he welcomed the initial report of the Sudan as an interesting, albeit brief and somewhat tardy document. It was explained that the measures which it related had been taken in response to the critical situation in the country, where fighting in the south and instability in the north were compounded by social, economic and natural disasters of all kinds, including a massive refugee problem. Exceptional steps, it was claimed, had been necessary to ensure national salvation.

13. Nevertheless, and despite his great sympathy for the country in its grave predicament and his hopes that the current difficulties would eventually be overcome, he pointed out that, in the not too distant past, the Sudan had been a democracy serving as an example for other Arab regimes. It was certainly not the Committee's role to pass judgement on the authorities of the reporting State, but its members were responsible for determining, to the best of their ability, the extent to which fundamental civil and political rights were actually protected and promoted in the country concerned. The questions he would ask had been formulated with that consideration in mind.

14. Firstly, what was the status of the laws which had been in force in the Sudan in June 1986, before the three different regimes that had followed? Secondly, how could the powers of the President of the Revolutionary Command Council for National Salvation to order the arrest of individuals merely suspected of endangering political or economic stability be reconciled with the provisions of articles 21, 22 and 25 or indeed of articles 12, 13 and 14 of the Covenant? Furthermore, the very important article 6 of the Covenant only permitted the death penalty to be imposed for very serious crimes. Section 41 (a) of Constitutional Decree No. 2 clearly contravened all those provisions. In addition, there had been reports of prisoners being compelled to testify under torture. Such practices were hardly "in harmony with the provisions of the Covenant", as stated in paragraph 13 of the report. He further inquired how many political prisoners were still under detention and whether they were awaiting trial before special or ordinary courts. Moreover, what was the situation regarding trade union freedoms as provided for in article 22 of the Covenant and ILO instruments, and what impact had the state of emergency had on such freedoms? Noting that Constitutional Decree No. 2 gave special courts the right to try persons accused of violating the provisions of that Decree or of any order made under it, he asked what procedures existed, relating specifically to the state of emergency and to the functioning of the special courts.

15. Mr. NDIAYE said that it would have been possible to invoke the difficult conditions experienced by the Sudan in recent years as a pretext for not submitting a report. It was gratifying that the Government had not done so, since breaking off relations merely put an end to any possibility of a dialogue with the Committee.

16. The report which had been submitted was a short one, but of course reports were to be judged not so much by their length as by their content. In that connection, the Committee would undoubtedly be concerned by the fact that Constitutional Decree No. 2 set aside all existing regulations and assigned quite exceptional powers to the President. The wording of the provision mentioned in paragraph 7 (g) of the report, was too flexible in permitting the arrest of individuals under mere suspicion of endangering political or economic stability; the implications of that provision were ill-defined. Moreover, the Committee would like to know how the rights of those remaining political prisoners were guaranteed and how those rights had been affected by the introduction of the new legal arrangements.

17. Paragraph 13 of the report implied that the abrogation of the 1985 Constitution did not involve a corresponding abrogation of human rights. Nevertheless, constitutional decrees apparently took priority over ordinary law. The Sudanese representative's failure to shed light on such discrepancies was especially unfortunate, since there was serious reason to believe that violations of human rights had occurred in the Sudan. It was not clear from paragraph 12 what was the status of human rights under the Covenant in the light of the constitutional decrees.

18. When referring to the multi-party system referred to in paragraph 17, the Sudanese representative had stated that a multi-party system was unworkable in the Sudan. It was, however, significant that the Committee had heard similar opinions expressed by other countries, such as Zaire and the Niger, which had nevertheless subsequently gone back on those views and created a multi-party system. The important point was that all Sudanese citizens should have a say in the running of public affairs and be eligible to compete for all offices of the State, including the highest.

19. Mr. FODOR observed that the report had been submitted about four years behind schedule and did not comply with the Committee's guidelines. However, he hoped that the Sudanese representative would be in a position to provide more information so as to provide the necessary foundation for a dialogue with the Committee. The failure to supply information on the three different regimes which had held power since 1986 was unfortunate, since, although frequent changes of regime added to the complexity of the situation, the Committee was responsible for examining the state of human rights in a country over a whole period and had therefore to adopt a dynamic rather than a static approach. The contents of the report and its oral presentation all appeared to relate to what was intended to happen in the future, whereas the Committee's task was to consider the situation in the immediate past and compliance with the articles of the Covenant during that period. The reasons for the failure to adhere to the Committee's guidelines were more likely to be found in the State party's failure to provide a sound basis for the enjoyment by Sudanese citizens of their rights under the Covenant, a situation which emerged only

too clearly from paragraph 12 of the report. If the Covenant did not form part of the national law of the Sudan, what was in fact the foundation for respect of the rights enshrined in that instrument?

20. Regarding paragraph 5, it would be of interest to know who was responsible for deciding whether a law should continue to apply. Since the Revolutionary Command Council for National Salvation obviously exercised judicial powers also (questions relating to arrest having been referred to it), it would again be interesting to know how the RCCNS was appointed and whether it enjoyed the confidence of the people. The reference to a state of emergency in paragraph 15 of the report raised considerable doubt as to whether the observance of human rights was possible at all in the present de jure and de facto situation, under which a very large range of offences were punishable by death. Many citizens had lost their lives during the civil war, some by execution and torture, and there had even been a resurgence of slavery in many parts of the country. All those issues required clarification.

21. Mr. AGUILAR URBINA said that the constitutional decrees, which were apparently the only fundamental laws currently in force in the Sudan, contained a series of derogations from articles of the Covenant including provisions from which no derogation was permissible under article 4. In spite of the claim in paragraph 13, there was nothing in the report to indicate that Sudanese legislation was in fact in harmony with the provisions of the Covenant. The Committee was entitled to be very disturbed by so short and insubstantial a report, when available information indicated that serious infringements of the Covenant had occurred and were still occurring in the Sudan. Although the report should have been presented in 1987 at the time when the RCCNS had seized power, no information had been provided on what had happened in the meantime. A very much fuller report was required, to enable an article-by-article analysis of compliance with the articles of the Covenant to be carried out.

22. One very clear derogation was from article 6, the paramount article of the Covenant, which enunciated the right to life and stated that the death penalty could only be imposed for serious offences. It was known, for example that a man had been sentenced to death merely for participating in the planning of a strike, although it was true that the death penalty had subsequently been remitted. It was the Committee's view that State parties were responsible for the behaviour of the security forces vis-à-vis the population, and reports had indicated that the security forces and the army had frequently violated the right to life, which was protected by article 6 of the Covenant. Not only had calls for investigation of such violations been disregarded, but the presumed complainants had been thrown into prison and maltreated. The reference to the state of emergency in paragraph 18 appeared to imply that, in the absence of progress in the establishment of the political system, the state of emergency might endure indefinitely. He would like a comment from the Sudanese delegation on that possibility. Paragraph 9 of the report, which dealt with the setting up of special courts for the trial of accused persons, appeared moreover to conflict with the right of all persons to a fair and public hearing before an independent and impartial tribunal established by law (article 14).

23. Mr. MYULLERSON thanked the Government of the Sudan for its report. It should be noted, however, that the report did not follow the Committee's guidelines and did not reveal the real situation prevailing in the Sudan.

24. He hoped that the discussion in the Committee would make it possible to obtain information concerning compliance with specific articles of the Covenant. He would like to know whether the Government had notified the Secretary-General, as provided for in article 4 of the Covenant, of its promulgation of the state of emergency.

25. Noting that the new Penal Code was based on the Sharia, he asked whether it would also be applied in those parts of the country which were primarily non-Muslim. With respect to flogging and amputation, which were commonly regarded by impartial bodies, non-governmental organizations and United Nations organs as inhuman and degrading, he would like to know whether the new Penal Code provided for such punishment and, if so, whether it was applied in practice.

26. Referring to article 126 of the Penal Code, which, according to his information, stated that any Muslim who advocated abandonment of Islam would be regarded as having committed apostasy, he asked how such a stipulation could be considered to be in accordance with the provisions of the Covenant, in particular article 18.

27. He would like to know what the expression "Showing of any political opposition" in paragraph 8 (a) of the report meant in practical terms. For example, he wondered whether, under the decree in question, making statements critical of the Government was considered to be a form of political opposition.

28. With regard to article 6 of the Covenant, he would welcome information concerning the number of cases in which the death penalty had been imposed.

29. Referring to paragraph 12 of the report, he would like to know how the Sudan could implement the requirements of the Covenant without enacting special legislation. In that connection, he thought it strange that the Government should say in paragraph 13 of its report that Sudanese legislation remained in harmony with the provisions of the Covenant.

30. Noting that the one-party system had failed in many countries, he wondered whether the Government was not afraid that, without the existence of political parties, it would be unable to fulfil the requirements of article 25 of the Covenant.

31. Mrs. HIGGINS welcomed the delegation of the Sudan and thanked it for the additional information it had made available. However, she wished to point out that the report itself was clearly inadequate. In that connection, it often happened that the Government which was represented before the Committee when a report was due was not the same one that had been in power during the entire period dealt with by the report. That could occur when there had been a change in Government because of elections, a coup d'état or for other reasons. However, it was the State that was the party to the Covenant, and the Government of the day necessarily exercised international responsibility for that State at a given moment of time. The individuals whose rights were

to be protected under the Covenant were concerned that the State in which they lived should guarantee their rights and they expected the Committee to monitor the situation in that regard. Furthermore, even if the current Government in the Sudan was held to be responsible only for what had occurred since its period in office, the report before the Committee did not even follow the guideline for that situation. There was no reason why the report could not have covered at least the period of the last two years.

32. With regard to article 4 of the Covenant, it seemed, according to paragraph 15 of the report, that all that was required was not to depart from the articles from which no derogation was permitted. However, much more was required under article 4. A State might not be entitled to derogate from other articles at all unless the circumstances envisaged under article 4 were met, and it was for the Committee to decide whether that was the case. It could only do so if the procedural notification required under article 4, paragraph 3, had been made. To the best of her knowledge, there had been no such notification. Secondly, it would be necessary to examine each of the derogations made and to see whether each one was required by the exigencies of the situation.

33. With regard to article 6 of the Covenant, she would like to know how many persons had been executed since 1989, whether extrajudicial executions had been a problem and how the death sentence for apostasy could be justified.

34. With respect to article 7 of the Covenant, she said that torture continued to be a serious problem. Furthermore, members had been informed of instances of public flogging, particularly of women street vendors operating without a licence. She would also like to know whether the new Penal Code provided for judicial amputation, crucifixion and public flogging.

35. With regard to articles 9 and 10 of the Covenant, there had been reports of political arrests and of prisoners being held at security headquarters where no visits by family members or lawyers were permitted. Information had also been received about the severe conditions prevailing in certain prisons.

36. With respect to article 14, she said that, since 1989, large numbers of judges considered not to be sympathetic to the regime had been removed and replaced by other judges. She would welcome further information on the Courts of Public Order in the Khartoum market-place where summary justice seemed to operate. She had been informed that in the special courts lawyers were unable to plead, cross-examine witnesses or appeal to higher courts. In that connection, she had recently seen a statement to the effect that those courts were to be abolished: was that an indication of intention or had that actually been done?

37. Referring to article 18, she mentioned the question of apostasy and said she would welcome more information on freedom of religion in the Sudan. As to articles 21 and 22, she would like to have further details on the particular problems faced by associations and trade unions. In that connection, she would welcome clarification about the reported arrest of trade unionists and academics who had taken part in a peaceful demonstration.

38. She had listened with great interest to the new legal proposals made and hoped that in due course the Committee would be able to examine the specific instruments. She had been interested to hear that political prisoners had been released. There seemed to be some difference of opinion between the Government and various non-governmental organizations about the numbers of remaining political prisoners and who constituted such prisoners. She hoped that something could be done to eliminate that difference of views.

39. Referring to article 25, she stressed the need for individuals to have a real choice and to be able to exercise self-determination. In other words, people must be able to choose a system and to have choices within it.

40. Mr. MAVROMMATIS said he was impressed by the courage of the Government of the Sudan in submitting the report, which, however unsatisfactory, would enable the Committee to initiate a dialogue that would help the Government in the crucial steps it was taking towards a return to democracy. He would welcome more background information on the historical, political and economic factors involved in the situation in the Sudan which would enable the Committee to understand the reasons for toppling an elected Government. He would like to know when it was envisaged to return to democracy. No one could justify the abrogation of political rights.

41. With regard to paragraph 7 (g) of the report, he said that individuals suspected of endangering political or economic stability should be entitled to appeal to an independent body. With respect to paragraph 8 (a), he remarked that the expression "political opposition" was a very vague term. Referring to paragraph 11 of the report, he noted that section 41 (a) gave very sweeping grounds for handing down a death sentence or imposing a term of imprisonment. Even if notice had been given of the proclamation of a state of emergency, such a provision would be contrary to article 6 of the Covenant.

42. Mr. ANDO thanked the Government of the Sudan for having sent such a high-level delegation and emphasized the importance of developing a dialogue. The Government itself had recognized that need by allowing a number of non-governmental organizations to visit the Sudan.

43. Turning to paragraphs 12 and 13 of the report, he asked how the Government envisaged safeguarding the application of the Covenant in view of the absence of any provisions protecting the rights referred to therein. He asked how the independance of the judiciary was guaranteed and what qualifications were required in order to be appointed as a judge of a special court. Although other members of the Committee had already mentioned paragraph 7 (g) of the report, he inquired how an appeal against arrest to the Revolutionary Command Council for National Salvation (RCCNS) could operate, as the President of the Council was himself ultimately responsible for ordering arrests. Paragraph 7 (e) stated that government employees could be dismissed from their employment by RCCNS and also lose their benefits, and he asked how their right to tenure and to a pension were protected. With regard to paragraph 8 of the report, he asked whether any foreign newspapers were allowed into the Sudan, whether the activities of foreign journalists were restricted and whether a prior licence was required to publish. He believed that radio and television were a state monopoly, and inquired whether there were any plans for their privatization. He also asked whether any academics had been dismissed since the revolution and, if so, why.

44. It was necessary to clarify the new political system described in paragraph 17 of the report as being based on participatory democracy. He asked whether any trade unions had been dissolved and any new ones created since the revolution. The Sudan being a country of many dialects, it would be interesting to know whether the Government had arranged for the Covenant to be translated into any of those dialects so as to acquaint the population with their human rights. Lastly, he inquired whether there was any prospect of the state of emergency being lifted.

45. Mr. DIMITRIJEVIC said that the course chosen by the Government of the Sudan in deciding to meet with the Committee, rather than avoiding its scrutiny, was an encouraging sign, and the report it had provided was extremely frank. The report seemed to imply that the Sudan had more important problems to deal with than protecting human rights. The presence of the Sudanese delegation was a sign of the Government's willingness to learn, and the Committee was encouraged by the assertion in part II of the report that non-derogation from articles 6, 7 and 8 (paras. 1 and 2), 11, 15, 16 and 18 of the Covenant was strictly observed.

46. However, the Committee would have appreciated a general introduction setting out the justification for the severe measures the Government had felt compelled to adopt, and providing a description of Sudanese society. He noted, in particular, the absence from the report of any mention of the new Penal Code, which he believed had been enacted before the report had been written. The Code, which was based on the Shariah, could be seen as being discriminatory in some respects. For instance, in some cases it perscribed a more severe punishment for Muslims, and the penalties for adultery were different in the north and the south of the Sudan. The Committee attached great importance to non-discrimination and had drafted a general comment on the subject, to which he drew the delegation's attention. The report made no mention of the position of women in the Sudan, or of the practice of slavery, which was reportedly still current. Although recent Governments could not be held responsible for the nature of Sudanese society, if they wished to modernize they had to turn their attention to such issues.

47. More important still was the observance of article 6 of the Covenant, which established the right to life. The list of offences to which the death penalty applied was very vague, and some of the offences were clearly not of the most serious nature. With regard to article 7 prohibiting torture, a number of the sentences prescribed were clearly not humane. Paragraphs 9 to 11 of the report described the extremely severe provisions that applied to ill-defined crimes, and he asked, in particular, whether the constitutional decrees applied to acts committed before their adoption. Regarding article 27 of the Covenant, as the Sudan was composed of a large number of minorities and of different religious groups, the Committee would welcome information on the composition of Sudanese society and on how the Government intended to allow the different groups to co-exist within a federal system.

48. Mr. SADI said that, like his colleagues, he appreciated the bluntness of the report submitted by the Government of the Sudan. It was clear from paragraph 12 that none of the rights contained in the Covenant were operative in the Sudan. After such a frank admission, there seemed no point in the Committee probing into details. The only course open to it was to convey a

message, through the delegation, to the Government of the Sudan in order to persuade it to work towards achieving observance of the provisions of the Covenant.

49. The gist of the message should be that sovereignty was no longer absolute. All countries that had signed United Nations treaties had to comply with their provisions and could not legislate just as they wished. Although the Committee appreciated the problems faced by the Sudan, those problems were no reason to deviate so far from the minimum rules for the observance of human rights set out in the Covenant. For example, the international community would never accept that adultery should be punished by death, or that the requirement, reported by the International League for Human Rights, for a woman to provide four Muslim male eyewitnesses to substantiate an accusation of rape, was just. The Committee should not condemn, but attempt to guide the Sudan back to the path marked out by the Covenant. The Government of the Sudan had also been accused of violating trade union rights and of detaining trade unionists, some of whom had allegedly died in prison. The delegation should inform its Government that, while the Committee sympathized with its difficulties, there were certain minimum human rights standards that had to be observed.

50. Mr. PRADO VALLEJO said that he, too, appreciated the decision of the Government of the Sudan to send such a high-level delegation to the Committee, a decision he interpreted as indicating its willingness to enter into a dialogue. As far as the report was concerned, its inadequacy was matched by its sincerity. The information provided in paragraphs 7-9 illustrated the absence of guarantees for basic human rights in the Sudan. He himself came from a third world country which shared some of the problems faced by the Sudan, but it was clear that, regardless of those difficulties, developments in the Sudan had taken an extremely negative turn as far as respect for human rights was concerned. The report showed that the Government could do and undo as it wished, without reference to any law or standard. Under Constitutional Decree No. 2, article 6, the Government possessed an extensive range of powers in the social, political and economic fields. There was a ban on political parties and on strikes, participation in which could entail the death penalty. Freedom of movement and transport were restricted, and government employees could be dismissed without compensation. The special courts established their own rules and procedure.

51. The dialogue between the delegation of the Sudan and the Committee should be designed to put an end to the situation described in the report. The Covenant was jus cogens, i.e. it was mandatory for all countries in the world. In the Sudan, there were extrajudicial executions and individuals were ill-treated. The provisions of article 4 of the Covenant, regarding derogations from the Covenant, had been ignored. The new Penal Code was based on the Shariah and not on the Covenant. Emergency legislation gave extensive powers to the Government and there were reportedly secret detention centres. Slavery and the slave trade were also reported to exist, and it was unacceptable that an offence such as apostasy should carry the death penalty. Although some political prisoners had been released, they were subject to all sorts of restrictions. The Secretary-General of the Islamic Front had made a statement calling for the execution of all opponents. Such declarations were totally at odds with the Covenant.

52. Discrimination on grounds of sex and religion also existed. The new Penal Code contained punishments that were unacceptable to the international community, and provided for no less than 31 political offences.

53. The best contribution that the Committee could make would be to persuade the Government, through its delegation, of the need to bring Sudanese law into line with recognized international standards.

54. Mr. WENNERGREN thanked the Sudanese delegation for its willingness to enter into a dialogue, which he took as proof of the Sudan's desire to fulfil its obligations under the Covenant. It had been indicated that the Sudan was in a state of transition. Transition was not in itself bad, provided that it was headed in the right direction. The recommendations made by the Conference on Justice and Legal Reform, which had been described to the Committee, seemed to show that the Sudan was indeed heading in the right direction. However, he had been struck by the absence from those recommendations of any mention of protection for fundamental human rights or of any reference to the Covenant. As a State party to the Covenant, the Sudan was required to act in compliance with it, and its political options were limited by the provisions of the Covenant.

55. The new Penal Code was an illustration of the Sudan's failure to take account of the Covenant. The Code introduced provisions which disregarded article 7 of the Covenant, and applied the death sentence to crimes other than the most serious, in violation of article 6. He asked how the new Penal Code had been enacted, and whether any attention at all had been paid to the Covenant.

56. The term "participatory democracy" required definition. Was the Government prepared to limit its choices in that respect to the terms of articles 19, 21, 22 and 25 of the Covenant, and to guarantee freedom of expression, peaceful assembly and the right of association? All of those requirements should be taken into account in preparing participatory democracy in order to avoid problems in the future. The citizens of the Sudan should be able to feel confident that, by virtue of their country's accession to the Covenant, they were entitled to certain fundamental rights that would also be taken into account in developing a system of legislation and a future federal constitution for the Sudan.

The meeting rose at 6.10 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-second session

SUMMARY RECORD OF THE 1066th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 July 1991, at 3 p.m.

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CONTENTS

Organizational and other matters (continued)

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GE.91-16580/3355B

The meeting was called to order at 3.15 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN drew attention to the Working Group's recommendation concerning the list of issues to be taken up in connection with the consideration of the third periodic report of Iraq (CCPR/C.64/Add.6) and invited the Committee to consider the list section by section.

Section I

2. Mr. SADI asked whether the list was based on a standard United Nations procedure. In particular, was the Committee to some extent bound by the periodic report submitted by the State party or was it free to formulate questions outside that framework?

3. Mr. AGUILAR URBINA said that, unless and until the Committee decided otherwise, the Working Group would tend to base itself on the State party's report, although the Committee was of course to a much greater extent bound by the Covenant.

4. Mr. WENNERGREN said it was his understanding that the main purpose of compiling a list of issues in advance was to enable members to take into account information available from non-governmental organizations or other sources when formulating their questions.

5. Mr. NDIAYE said that the Committee, when putting questions to the State party's delegation, was in no sense bound by the content of the State party's periodic report; its attitude had to be dictated by the rights enunciated in the Covenant. If the information provided in the report was inadequate, it was the Committee's right and duty to make searching further inquiries.

6. Mr. HOUSHMAND (Representative of the Secretary-General) said that the Committee's previous practice had been for the Secretariat to prepare well in advance an analytical study based on the State party's report, the summary records of discussions of previous periodic reports by the State party and information available from non-governmental organizations, so as to enable the Committee to prepare a list of issues for presentation to the State party's delegation. It had subsequently been decided to appoint a country rapporteur to act as coordinator for a particular draft list in respect of its examination by the Working Group and subsequently by the Committee in plenary. He confirmed that the Committee did in fact receive information direct from non-governmental organizations.

7. Mrs. HIGGINS, supported by Mr. EL SHAFEI, said that in the present case the Committee had to strike a balance between questions deriving directly from the third periodic report by the State party and questions on specific issues of concern to the Committee; some questions in the draft list appeared naive, since the Committee already knew the answers to them.

8. Mr. SADI, referring to subsection (a), suggested that the Committee should avoid wasting time on questions, the answers to which were self-evident, in view of the undisputed illegality of the situaton.

9. Mr. NDIAYE said that nevertheless it was the Committee's function to elicit answers in regard to a State party's behaviour under the Covenant. Iraq had to render account for the treatment of persons under its jurisdiction. The Covenant did not discriminate between persons legally or illegally under a State party's jurisdiction.

10. Mrs. HIGGINS suggested that, in order to avoid discussing the issues of annexation and de facto regimes, the Committee might simply ask, under subsection (a) of the list of issues, what orders and instructions had been issued to the Iraqi forces in regard to the protection of human rights in Kuwait.

11. Mr. SADI pointed out that it might constitute an unfortunate precedent to ask States parties to report on their behaviour in territories which they had occupied in the past.

12. The CHAIRMAN said that the second periodic report of Iraq had been due on 4 April 1985 and the third periodic report on 4 April 1990. A report had finally been submitted on 5 June 1991, so that it in fact covered the whole period from 4 April 1985 to 5 June 1991.

13. Mr. MAVROMMATIS said that the issue was very simple. Whatever general formulation was adopted, it was quite clear that members of the Committee were entitled to pose any questions that they wished. Obligations under the Covenant remained in force and continued to apply irrespective of the circumstances.

14. Mr. NDIAYE pointed out that the Committee could always rely on article 1 of the Covenant, which provided categorically for the right to self-determination.

15. Mrs. HIGGINS said that a general formulation would enable the Committee to ask for details of Iraq's behaviour in Kuwait in connection with article 2 of the Covenant, which required a State party to respect the rights of all persons subject to its jurisdiction, without distinction of any kind.

16. The CHAIRMAN asked why some passages in the list were in square brackets.

17. Mr. AGUILAR URBINA said that the Working Group had been unable to reach agreement on certain paragraphs, which had accordingly been placed in square brackets. In subsection (e), the English word "rioters" had been used by Mr. Dimitrijevic, but Mr. Wennergren had felt unable to accept that term. The matter had therefore been left for a decision by the plenary Committee.

18. Mr. EL SHAFEI said he was not entirely clear what was the intention of the question in subsection (e).

19. Mr. DIMITRIJEVIC said the nationality of the rioters was uncertain and the question had been put forward in order to determine who in fact they were. He proposed that the question should remain in the list with the square brackets deleted.

20. Mr. MAVROMMATIS said that the Committee appeared to be in general agreement on that issue. Since everyone was well aware that the time available for putting questions was limited, the Committee should concentrate on the main articles of the Covenant and leave the remaining questions to the next session.

21. The CHAIRMAN said that, at a recent meeting of the Bureau, it had been found that the total time available - one afternoon meeting and two further morning and afternoon meetings - was insufficient for full consideration of the State party's report. It had therefore been proposed to recommend that the Committee should merely examine the more urgent questions at the current session, leaving the remainder for examination at a later date, as Mr. Mavrommatis had suggested. The division of the consideration of a State party's report between two sessions was not in fact unprecedented.

22. Mr. NDIAYE said that much would depend on the spirit of cooperation shown by the Iraqi delegation. He thought that the Committee should proceed in the usual manner and wait until the end of each meeting to see how many of the issues on the list had been covered before envisaging the possibility of holding additional meeting on the report.

23. Mrs. HIGGINS said that she had difficulty in accepting Mr. Ndiaye's suggestion and thought that if the Committee proceeded in its normal manner it would not have sufficient time to cover all the issues on the list.

24. Mr. DIMITRIJEVIC thought that the Committee should adopt the list and indicate to the Chairman the order in which the issues should be considered.

25. The CHAIRMAN suggested that the Committee should first adopt the list of issues and then decide on the order in which the various issues would be taken up.

26. If he heard no objection, he would take it that the Committee agreed to adopt section I and to delete the square brackets around subsection (e).

27. Section I, as amended, was adopted.

Section II

28. Mr. EL SHAFEI, referring to the question in subsection (b), said that the people of Kuwait lived in an independent State under a sovereign Government. The Committee should not include such a question, which he considered to be an insult to the people of Kuwait.

29. Mrs. HIGGINS agreed with Mr. El Shafei. She proposed that the paragraph in question should be replaced by the following text: "Please comment on the events of 2 August 1990 in the light of Iraq's obligations under article 1 of the Covenant."

30. Section II, as amended, was adopted.

Section III

31. Section III was adopted.

SectionIV

32. Following a discussion in which Mr. NDIAYE, Mr. AGUILAR URBINA and Mr. MAVROMMATIS took part, the CHAIRMAN said that, if he heard no objection, he would take it that the Committee decided to delete the section and to renumber the subsequent sections accordingly.

33. It was so decided.

New section IV

34. Mr. EL SHAFEI, referring to subsection (d) (i), said that as far as he was aware, the rules and regulations in question had called for the police and security forces to open fire. He therefore wondered what kind of reply could be expected from the Government.

35. With regard to subsection (d) (ii), he pointed out that there had been an uprising against the regime and that the police and security forces had been instructed to shoot. He therefore felt that the question was not relevant.

36. Mr. SADI, referring to subsection (f), wondered whether Iraq was in any position to provide an estimate of actual casualties and disappearances as well as potential threats to life in Kuwait resulting from military operations by Iraqi troops, including the deliberate setting on fire of oil wells. He thought that greater emphasis should be given to the deliberate setting on fire of oil wells per se, in order to reflect the gravity of that act, which was so catastrophic that it could not be mentioned only in passing.

37. Mrs. HIGGINS agreed that it would be difficult to estimate the number of threats to life resulting from the deliberate setting on fire of oil wells. She would prefer to focus on the question of redress. In that regard, she proposed the following text: "Please provide details about the redress being made available in respect of casualties and disappearances in Kuwait, following the events of 2 August 1990. Please provide details about the redress being made available for damage to the right to life resulting from the deliberate setting on fire of oil wells."

38. Subsection (f), as amended, was adopted.

39. Mr. NDIAYE thought that the first sentence in subsection (a) should be deleted, since the same question had been taken up during the consideration of Iraq's second periodic report.

40. In response to a point raised by Mrs. HIGGINS, Mr. NDIAYE drew attention to the third sentence of paragraph 29 of the report of Iraq (CCPR/C/64/Add.6) and said that, since the Iraqi authorities had not completed the review in question, they could not be expected to provide a more detailed reply.

41. Mr. DIMITRIJEVIC thought that the matter might be resolved by replacing the first sentence by the following text: "Has the number of offences punishable by the death penalty according to existing Iraqi law increased or decreased in the period under review?".

42. Mr. MAVROMMATIS said that article 6 was one of the articles to which the Committee should devote particular attention. He feared that by including subsections (a), (b), (c) and (d) the Committee was distracting attention from subsections (e) and (f), which in his view posed the most important topical issues. By asking questions about normal times, the Committee was in fact providing the Government of Iraq with a means of evading those questions that were currently of greatest significance.

43. Mrs. HIGGINS said that, although she appreciated the importance of focusing on contemporary issues, she felt that the Committee should also concern itself with the kind of questions raised by subsection (a), as they affected a large number of citizens of Iraq, regardless of recent events.

44. Mr. DIMITRIJEVIC said that, while he appreciated that the time that had elapsed since the submission of the report was very short, the question on Decree No. 840 of the Revolutionary Command Council was extremely important, as many people had been liquidated under that Decree, which was not mentioned in the report. Accordingly, he felt that that question should be retained, if not in subsection (a), then elsewhere in the list.

45. The CHAIRMAN said that, in the light of the comments made, he would take it that all but the last sentence of subsection (a) should be deleted.

46. Subsection (a), as amended, was adopted.

47. Subsections (b) and (c) were adopted.

48. Mr. DIMITRIJEVIC endorsed Mr. El Shafei's remarks concerning subsection (d) (i), and suggested that the words "in particular with regard to the 'riots' referred to in the report", should be deleted.

49. Subsection (d), as amended, was adopted.

50. Subsection (e) was adopted.

New section V

51. Mrs. HIGGINS said that she had no problems with the existing questions in new section V but felt that special reference should be made to recent events. She proposed adding the question: "Have all Kuwaitis taken to Iraq as prisoners after 2 August 1990 been released or accounted for?".

52. It was so decided.

53. Mr. NDIAYE wondered whether there was any need to retain the first question in subsection (a), as paragraph 30 of the Iraq report stated that officials had been tried and convicted for practising torture.

54. The CHAIRMAN said that such a change would mean that the second sentence would also require some modification.

55. Subsection (a), as amended, was adopted.

56. Subsection (b) was adopted.

57. The CHAIRMAN asked Mr. Aguilar Urbina to clarify the reason for the square brackets in subsections (c) and (d).

58. Mr. AGUILAR URBINA said that the question in subsection (c) was a highly specific one, while the question in subsection (d) was one that was always put. In view of the lack of time, the Working Group had considered the possibility of deleting those questions in order to facilitate consideration of issues under article 7, in particular.

59. Mr. MAVROMMATIS suggested that subsections (c) and (d) should be deleted.

60. It was so decided.

61. New section V, as amended, was adopted.

New sections VI and VII

62. New sections VI and VII were adopted.

New section VIII

63. Mr. MAVROMMATIS proposed inserting the words "consistent with the Covenant" after the word "basis" in the second question under subsection (a).

64. New section VIII, as amended, was adopted.

New section IX

65. Mr. NDIAYE suggested that the words "other than those officially recognized in Iraq" should be deleted from subsection (a).

66. New section IX, as amended, was adopted.

New section X

67. Mr. SADI said that he wished to add the following specific question to the section: "How does Iraq reconcile the existence of a one-party system with the spirit and letter of articles 21 and 22 of the Covenant?"

68. Mrs. HIGGINS said that, although she sympathized with Mr. Sadi's concern, the Committee's current practice was to ask questions on the multi-party system, in connection with article 25 of the Covenant. The issue would be clearer when the Committee had prepared its general comment on article 25. Consequently, she felt that including such a question under articles 21 and 22 of the Covenant was likely further to complicate the issue.

69. Mr. MAVROMMATIS endorsed Mrs. Higgins' remarks. It was best to leave it to individual members to put the question at the moment they felt most appropriate.

70. Mr. SADI said that he had no objection to putting the question under article 25 of the Covenant, but he felt that the incompatibility of the one-party system with the provisions of articles 21 and 22 was so blatant that the question should be put systematically.

71. Mr. DIMITRIJEVIC said that he shared the view of Mr. Mavrommatis. The Committee was at a turning-point, as in the past it had entertained many reports from countries with one-party systems without any difficulty. Some members of the Committee had even said that the Covenant did not necessarily imply political pluralism. The issue should be given careful thought before the Committee took a course that might be interpreted as implying a commitment to the multi-party system.

72. The CHAIRMAN said that, while he sympathized with Mr. Sadi's suggestion, it would represent a departure from the Committee's previous practice at a moment which was not very appropriate.

73. Mr. AGUILAR URBINA endorsed the views expressed by Mr. Dimitrijevic and Mr. Mavrommatis. Mr. Sadi's suggestion was very important, but it should be considered and discussed in depth by the Committee as it marked a departure from the Committee's previous practice.

74. Mr. SADI said that, when the Covenant had been drafted, the one-party system had been widely accepted. However, times had changed and a new consensus over the desirability of a multi-party system was emerging throughout the world, which the Committee should take into account. The issue should be discussed in connection with the Committee's general comments; if the Committee failed to accommodate the emerging consensus, it would find itself behind the times rather than in the vanguard.

75. Mr. NDIAYE asked for clarification of the expression "fraudulently to join the Ba'ath Party" in subsection (b). Had the term been taken from the report and was it a mistranslation?

76. Mr. DIMITRIJEVIC said that the analytical review of the report by the Secretariat had revealed that one of the questions that had remained unanswered concerned the offence committed by a person who joined the Ba'ath Party while concealing that he or she had been a member of another political party or failing to disclose other personal details. Defecting from the Ba'ath Party also carried the death penalty.

77. Mrs. HIGGINS suggested replacing the expression "fraudulently to join the Ba'ath Party" by "to join the Ba'ath Party without full disclosure".

78. New section X, as amended, was adopted.

New section XI

79. New section XI was adopted.

New section XII

80. Mrs. HIGGINS said that she would like to include in new section XII a question that mentioned the Shiites by name, although she appreciated that subsection (c) could be considered as addressing the issue. There had been considerable criticism that the plight of the Shiites had been ignored while the situation of the Kurds had quite rightly attracted international attention, and in the interests of balance it was desirable specifically to mention the

Shiites in order to give them equal consideration to that given to the Kurds by subsection (a). Accordingly, she suggested inserting the following question before subsection (c): "Please comment on the current status of the Shiites in the south of Iraq."

81. Mr. SADI wondered whether it was correct to refer to the Kurds as a minority, as he believed they represented over 25 per cent of the population of Iraq.

82. Mr. AGUILAR URBINA said that Mr. Sadi had raised an important issue which could be illustrated by the fact that, although women constituted a numerical majority in most societies, they were considered as a minority on account of the manner in which they were treated. He noted that there was a third group in Iraq, the Assyrians, who had suffered as much as or even more than the Kurds. He suggested that a specific question should perhaps be included relating to the situation of the Assyrians who had been the victims of persecution throughout the twentieth century.

83. Mr. EL SHAFEI said that if the words "other than the Kurds" were deleted from subsection (c) the problem would be settled.

84. Mr. NDIAYE said that he did not believe that the concept of a minority was a merely quantitative issue, as could be attested by all those who had experienced colonialism and who, although a majority, had effectively been treated as a minority, by the administration and by law, as was the case of the Kurds and the Shiites.

85. Mr. SADI said that he did not like the association of the term "minority" with a religious subdivision of a society. He felt that the question of the Shiites should be dealt with under the question on religious freedom. Dealing with minorities on a religious basis was likely to create a very dangerous precedent and promote division rather than harmony.

86. Mrs. HIGGINS said that Mr. Sadi seemed to be adopting the view expressed by some States that to accept that certain groups were minorities was divisive, a view she did not share. The Committee had referred to religious minorities before and she had no objection to its doing so now. Furthermore, with reference to the remarks by Mr. Ndiaye, she could not endorse the concept of de facto "minoritization". She pointed out that the question of the blacks in South Africa had been dealt with not as a question of a minority, but as a question of self-determination. However, she could accept a specific question on the situation of the Shiites in connection with article 18 of the Covenant.

87. Mr. AGUILAR URBINA stressed again that groups which might not actually constitute minorities could in fact be discriminated against as such; persons belonging to those groups could be "minoritized" and their rights denied in a manner that constituted a violation of article 27 of the Covenant.

88. Mr. MYULLERSON suggested that, at least as far as the Kurds were concerned, the issue was not so much one of actual or relative numbers as that of determining whether they qualified as a minority for the purposes of article 27 or as a people for the purposes of article 1.

89. Mr. NDIAYE remarked that, irrespective of their numbers, the Shiites in Iraq, besides having been politically marginalized until their spectacular revolt against such treatment, were without question victims of religious discrimination. In his opinion, article 27 of the Covenant certainly applied.

90. Mr. EL SHAFEI submitted that it was rather article 18 which applied, and that the questions to be posed should relate to the application of that article.

91. Mrs. HIGGINS, observing that the matter obviously involved deep differences of opinion, said that her own, personal legal analysis had led her to believe that there existed, under international law, no right of self-determination for the Kurds. That was essentially because the conditions deemed necessary under the law for that right to exist did not pertain. It was, of course, possible that if peoples did break away and establish themselves separately, international law might in due course take acknowledgement of that new reality, but that was not the same as stating that each and every people enjoyed a priori the right of self-determination.

92. That reasoning led her to feel somewhat uneasy about placing the first of the questions posed under section II of the list of issues, although she realized that only autonomy was mentioned therein.

93. The Committee seemed to be divided concerning the actual relation of the questions formulated in new section XII to article 27. Unlike Mr. El Shafei, she considered that the Shiite issue was too broad to be accommodated under article 18. Perhaps, as a compromise, it might be reintroduced as a single topic under the heading of non-discrimination (former section IV, which had been deleted).

94. Mr. ANDO said that he contined to prefer the order of the original draft, but could accept Mrs. Higgins' suggestion concerning the Shiite issue. However, there still remained in new section XII the questions concerning the Kurds. Perhaps the answer would be to combine them in a single section with those posed in relation to article 1.

95. The CHAIRMAN reminded the Committee that, in dealing with communications in the past, it had had some unhappy experiences when the distinction between articles 1 and 27 had become blurred.

96. Mr. SADI considered that all the questions relating to the Kurds might be grouped together and posed with reference to the application of article 1 of the Covenant.

97. Mr. MAVROMMATIS, observing that there were far more Kurds outside than inside Iraq, that their legal status was an issue that would exercise jurists for many years to come, and that the question of their autonomy would be more appropriately discussed in other forums, urged the Committee not to be diverted from its essential concerns. He believed that, apart from the amendment suggested by Mrs. Higgins, the text should remain unchanged.

98. Mr. NDIAYE said that he could accept the suggestion by Mrs. Higgins, but would reserve the right, at an appropriate moment, to address the issue of the Shiites under article 27.

99. New section XII, as amended, was adopted.

100. The list of issues as a whole, as amended, was adopted.

101. The CHAIRMAN invited the Committee to consider the handling of what remained a somewhat lengthy list of issues in the strictly limited time available for consideration of the third periodic report of Iraq. The Bureau recommended that certain of those issues should be singled out as a matter of immediate priority, and that the possibility should be left open of resuming consideration of outstanding issues at the Committee's autumn session.

102. Mrs. HIGGINS suggested that the Committee should address itself in the first instance to the application of articles 6, 7, 9 and 27 of the Covenant, as had been decided at the forty-first session. To those priority concerns might be added questions related to articles 1 and 4, on which, incidentally, the delegation of Iraq might wish to volunteer information. She further suggested that the representatives of Iraq should be notified accordingly.

103. After a procedural discussion in which Mr. MAVROMMATIS, Mr. ANDO, Mr. AGUILAR URBINA, Mrs. HIGGINS, Mr. EL SHAFEI and Mr. NDIAYE took part, the CHAIRMAN suggested that in the Committee's consideration of the third periodic report of Iraq, issues relating to the application of articles 6, 7, 9 and 27 of the Covenant would be addressed in the first instance, to be followed by issues relating to the application of other articles, articles 1 and 4 being taken up preferentially. The list of issues should be appropriately reordered to facilitate consideration of the third periodic report of Iraq in that manner. He also took it that, while every effort would be made to complete discussion of the report during the time allotted at the current session, the possibility of resuming consideration at the Committee's forty-third session would be retained.

104. It was so decided.

The meeting rose at 6 p.m.